IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.642 OF 2002

1.Mumbai Municipal Pensioners' Association, a society registered under the Societies Act and Mumbai Public Trust Act)
2.M.Y.Sabnis, President,
3.Jagannath V. Kulkarni, Vice-President, All having their office at G/N. Municipal Ward office, Ground Floor,Room No.9) J.K. Sawant Marg, Dadar, Mumbai-400 028. ..PETITIONERS

Versus

1.Brihanmumbai Municipal Corporation
2.The Municipal Commissioner, both having their office at Mahapalika Marg, Fort, Mumbai-400 001. ..RESPONDENTS

Mr. M.P.Vashi, for the Petitioners.
Mrs. P.D. Purandhare, for Respondent No.1.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATE : 5TH OCTOBER 2006.

ORAL JUDGMENT (PER F.I. REBELLO, J.)

. The petitioner No.1 is an Association of Retired Municipal Employees who were working with respondent No.1. Their main grievance was that inspite of the Revised Pension Scheme which had become effective from 1st July, 1995 the Respondent No.1 had not paid the entire pension dues. Prayer clauses (a), (b), (c) and (e) are related to those dues. On behalf of the respondent No.1 Nilima V. Virkar, Deputy Chief Accountant (PP) has filed an affidavit. In paragraph 23 it is set out that out of 11,080 claims of retirees from 1st July, 1995, 5834 claims were paid fully, 741 claims are paid partly and steps are taken to expedite the

balance payments. This affidavit was filed on 21st September, 2004. When the matter comes up for final hearing learned Counsel for the Respondent No.1 after taking instructions submits that except for 2300 all other retirees have been paid their pension. These 2300 retirees have not been paid on account of administrative problems which requires those retires to comply with certain requirements. As soon as those Pensioners comply with the requirement the Respondent No.1 Corporation would pay them their benefits within six weeks of making such compliance. We are satisfied with the statement made on behalf of the Corporation that in so far as pensioners dues are concerned, they have taken steps to comply with the same and in respect of those who have not been paid yet they are ready to pay the same on administrative difficulties being settled. In the light of that prayer clauses (a), (b) and (e) no longer survive.

2. Prayer clause (c) reads as under:-

> "(c) That the pension and family pension due to the employees of the Respondent Corporation retired on or after 1.7.1995 may be ordered to be subject to the minimum of Rs.1,740/- i.e. 50% of the lowest pay in the Respondent Corporation viz. Rs.3,480/- instead of Rs.1,050/- per month as fixed by the Municipal Commissioner as per the Circular No.GAD/FGR/25 dated 10.1.2000."

The basis of the petitioners claim is that in so far as

Central Government and State Government Employees are concerned they are paying minimum pension of Rs.1275/-. We may note that in so far as the Corporation employees are concerned their pay revision is every five years instead of 10 years as in the case of State Government and Central Government Employees. The minimum pay scale of an employee of the Municipal Corporation is Rs.3,480/- compared to the minimum of Rs.2,550/- in the State Government. Thus those who are drawing higher pay scale cannot contend that they should be treated on par in so far as pensionary benefits of State Government are concerned. Pensionary benefits are fixed taking into consideration the requirement of a retire. Thuss a Municipal Corporation employee is drawing higher salary compared to the State Government and Central Government employees. In these circumstances it cannot be said that the decision to fix minimum pension at Rs.1050/- is arbitrary or illegal. Consequently, that contention must be rejected.

. The other relief which has been sought is in terms of prayer clause (d) which reads as under:-

> "That the municipal pensioners and the family pensioners may be paid Dearness Allowance at the same rate as available to the municipal employees in service based on the amount of their basic pension with effect from 1.7.1995."

It is submitted that those in service and those who have retired should be treated equally in so far as Dearness

Allowance is concerned. Those who are in service normally have a larger family to maintain vis-a-vis those who retired. This is a factor which is always taken into consideration while granting the benefit of D.A. Because those in service are paid higher D.A. does not necessitate that those not in service have to be placed on same bar with those in service. In our opinion this contention has also no merit and consequently that contention must also be rejected.

. In the light of what is set out above, Rule discharged, subject to what we have stated in the earlier part of the judgment. In the circumstances of the case there shall be no order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA, J.)